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IN THE

Supreme Court of the United States

October Term, 1954
No. 747

IRENE L. FAIRBAIRN, as Administratrix of the goods, chattels and credits of ROBERT L. FAIRBAIRN, deceased,

Petitioner,

against

NORTH ATLANTIC AND GULF STEAMSHIP COMPANY,

Respondent.

PETITIONER'S REPLY BRIEF

JACOB RASSNER,
Attorney for Petitioner.

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320
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PETITIONER'S REPLY BRIEF

Mr. Eugene Underwood in his reply brief has resorted to taking statements made by Judge Edward Weinfeld during the first trial, which statements, taken out of context do not accurately reflect the true situation.[1]

[1] In order to obviate any discussion with Judge Edward Weinfeld, petitioner's counsel voluntarily offered to pay for the expenses incurred by the defendant as a condition for a mistrial and personally assumed responsibility. Petitioner's counsel was guilty of fault in relying on the honesty of Brooks and in not anticipating that Mr. Eugene Underwood would talk to Mr. Brooks, after which conversation Mr. Brooks would have a change of attitude. This was all during the first trial and not during the trial of the case at bar. In view of Judge Weinfield's comment and as a point of personal privilege, petitioner's counsel submits that the reference made by Judge Weinfeld was to a motion and not to a trial, where the Court felt that the research of law was such that it required him to do further research, that but one client, to counsel's recollection, was represented before Judge Weinfeld prior to the first trial and that there was no case before Judge Weinfeld that had come to trial unprepared.

The displeasure of the Court in the first trial does not seem to be an adequate legal ground for denying a petition for certiorari predicated on constitutional grounds in the case at bar.

Plaintiff respectfully submits that the statements made by a trial court constitute dictum, not evidence.

The following facts are not subject to contradiction:

1—Respondent was in default in not appearing on an examination before trial pursuant to a notice duly served.[2]

2—If the notice of examination before trial was complied with it would have resulted in Hansen being produced by the respondent.

3—The acting master's report (Hansen's) if accepted by a jury would constitute liability and entitled petitioner to a verdict.

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[2] September 15, 1950.

Burlingham, Veeder, Clark & Hupper, Esqs.,
27 William Street
New York, N. Y.

Att: G. Hunter Merritt, Esq.

Re: Irene L. Fairbairn, etc. v. North Atlantic & Gulf Steamship Co. Inc.

Gentlemen:

It is requested that you set forth the names and addresses of the chief mate and the purser in the above case. If both or either of them are still employed by the defendant, it is desired that they be produced for an examination before trial pursuant to our notice to examine the defendant.

With reference to the radiogram set forth in your letter of August 8, 1950, please state the exact time when said radiogram was issued.

Your early advices on this will be appreciated.

Very truly yours,

JACOB RASSNER
By: ROBERT KLONSKY

RK:l

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4—The edited report made by Gould did n did not entitle the petitioner to a verdict.

5—Implicit within the jury's verdict was was the fact that it accepted Gould's statement and reject rejected Hansen's statement.

6—Hansen was at sea on a vessel, in Ala in Alaskan waters, and due to arrive in San Francisco on June 2 June 20, 1954, at the time this case was reached for trial.

7—This contention was not an afterthough nought, but a direct statement to Judge Knox that, in the absen absence of Hansen as a witness, petitioner's rights would ould be seriously prejudiced.

Had petitioner's notice of examination btion been complied with, petitioner would have been in a positio osition to establish the genuineness and truth of Hansen's staten statement as to the cause of death of Fairbairn, petitioner's hus 's husband.

We humbly submit that the fact that a sea a seaman, particularly a master, who was an eye-witness to the to the material facts of the case, being at sea and not available fo able for a period of approximately three weeks, constitutes a vali a valid ground for an adjournment of the trial for the period eriod of such time. That the denial to a widow of an opportuni ortunity to produce the acting master as a fact witness in her h her behalf, constituted a denial of justice and consequently an tly an abuse of discretion, in violation of her Constitutional rig nal rights.

Respectfully submitted, ed,

JACOB JACOB RASSNER,
Attorney orney for Petitioner.